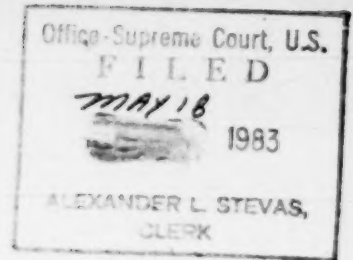


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NO. _____

IN THE
SUPREME COURT OF THE UNITED
STATES

1982 TERM

ALBERT T. EHLERS

V.

CITY OF DECATUR, GEORGIA

* * *

ON APPEAL FROM UNITED STATES DISTRICT
COURT, NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION; ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT.

* * *

APPENDICES

ALBERT T. EHLERS, PRO SE
3142 ARGONNE DR. N. W.
ATLANTA, GEORGIA 30305
TEL. 404-237-9514

APPENDIX A
JUDGMENT OF DISTRICT COURT

Judgment of Decision by the
Court

UNITED STATES DISTRICT COURT

For the

Northern District of
Georgia

Civil Action File No.
C77-1895A

ALBERT T. EHLERS

v.

JUDGMENT

CITY OF DECATUR, GEORGIA

This action came on for consideration before the Court, Honorable Harold L. Murphy United States District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered,

It is Ordered and Adjudge that the Plaintiff ALBERT T. EHLERS recover of defendant CITY OF DECATUR, GEORGIA, the amount of FIVE-THOUSAND ONE-HUNDRED TWENTY-SEVEN & 50/100 (\$5,127.50) attorney's fees for services by Mr. Genins and expenses in the amount of TWO-HUNDRED THIRTY-ONE & 50/100 (\$231.50).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ALBERT T. EHLERS
Plaintiff

CIVIL ACTION
NO. C 77-1895A

v.

CITY OF DECATUR, GEORGIA
Defendant

ORDER

This case is before the Court upon the Motion of plaintiff, Albert T. Ehlers, for attorney's fees and expenses arising from this civil rights action.

Plaintiff's cause of action arose under 42 USC Sec. 1983 for deprivation of property without due process of law and a denial of his right not to have his freedom of speech abridged. Specifically plaintiff contended such constitutional deprivations occurred as a result of a sign ordinance passed by defendant which prohibited him from advertising his property for rent. See *Linmark Assoc., Inc. v. Township of Willingboro*, 431 US 85 (1977).

In 1975 plaintiff placed a "For Rent" sign on his property in Decatur, Georgia, in violation of a city ordinance that prohibited such signs. City police removed the sign, and in 1977 Ehlers brought this suit for damages under 42 USC Sec. 1983. This court granted summary judgment for the city on the ground that Ehlers had not complied with Georgia's ante-litem notice statute, Ga. Code Ann. Par. 69-308, and plaintiff appealed.

In *Ehlers v. City of Decatur*, 614 F2d 54 (5th Cir. 1980) this Court was reversed with the court on appeal holding:

"Federal courts may not require exhaustion of state administrative or judicial remedies in a Par. 1983 action for damages for deprivation of a constitutional right. *Monroe v. Pape*, 365 US 167, 81 S.Ct. 473, 5 L.Ed. 2d 492 (1961); *Wells Fargo Armored Serv. Corp. v. Georgia Public Serv. Comm'n* 547 F2d 938, 939-940 n.1 (5th Cir. 1977); *Bryant v. Potts*, 528 F2d 621 (5th Cir. 1976). States may not statutorily burden access to the federal courts with requirements

federal courts themselves are prohibited from imposing. U.S. Const. art. VI, cl. 2 (Supremacy Clause). Contrast *De Almanza v. Laredo Water Works Syst.*, 582 F2d 970 (5th Cir. 1978) (ante-litem notice constitutional as applied to state law claim in diversity suit).

Georgia's ante-litem notice requirement therefore may not constitutionally be applied to this Par. 1983 action for damages for deprivation of a constitutional right."

This case was tried before a jury and a verdict in favor of plaintiff for \$990.00 damages was returned.

Plaintiff filed this action pro se and handled the action on that basis until March 1981 when he employed attorney, John Genins, to represent him in the case. The plaintiff, Albert T. Ehlers is himself a licensed attorney in the State of Georgia.

Plaintiff now seeks expenses, attorney's fees for representing himself as a pro se litigant and attorney's fees for work performed by attorney John Genins in this action.

The Civil Rights Attorney's Fees Award Act of 1976, 42 USC Sec. 1988, provides that the district court may, in its discretion, award the prevailing party in a civil rights suit reasonable attorney's fees. Generally, the prevailing plaintiff should recover an attorney's fee unless special circumstances would render such an award unjust. *Criterion Club of Albany v. Board of Commissioners*, 594 F2d 118, 120 (5th Cir. 1979); *Morrow v. Dillard*, 580 F2d 1284, 1300 (5th Cir. 1978); *Gore v. Turner*, 563 F2d 159, 163 (5th Cir. 1977).

In his complaint the plaintiff sought damages for loss of rentals, loss of time and punitive damages.

At the time this case was tried the issue of the potential liability of a municipal corporation for punitive damages in a civil rights case was pending before the Supreme Court. At trial this Court submitted the issue of punitive damages to the jury and informed counsel that such an award, if made,

could be considered by the court upon appropriate motion to the court. While the Supreme Court has now ruled upon that issue, no punitive damages were awarded to plaintiff by the jury in this case. *City of Newport v. Fact Concerts, Inc.*, 49 USLW 4860 (1981).

At trial the evidence showed the loss of rentals to plaintiff to be \$990.00, the award made by the jury verdict in the case.

While plaintiff did not prevail upon the issue of punitive damages, it is clear that he is the prevailing party and is entitled to recover expenses and reasonable attorney's fees, not limited by the amount of the damages awarded by the jury. *Harkless v. Sweeny Independent School District et al.*, 608 F.2d 594 (5th Cir. 1979).

* * * * * (Remaining portion of order is taken up with how the court arrived at the monetary value of Mr. Genins services and is thought to have no relevancy on denial of pro se attorney fees to plaintiff litigant). * *

* * *

ACCORDINGLY, the Clerk will enter judgment in favor of plaintiff and against defendant for \$5,127.50 attorney's fees for services by Mr. Genins, and \$231.50 expenses for a total of \$5,359.00; and, plaintiff's prayers for attorney's fees for representing himself are denied.

IT IS SO ORDERED, this 17th day of December, 1981.

/s/ Harold L. Murphy
United States District
Judge.

APPENDIX B

OPINION OF COURT OF APPEALS
ELEVENTH CIRCUIT

IN THE UNITED STATES COURT OF
APPEALS

FOR THE ELEVENTH CIRCUIT

' DO NOT '
' PUBLISH '

NO. 82-8119
Non-Argument Calendar

ALBERT T. EHLERS
Plaintiff-Appellant,
v.

CITY OF DECATUR, GEORGIA
Defendant-Appellee

APPEAL FROM THE UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF GEORGIA

(January 3, 1983)

Before HILL, KRAVITCH AND HENDERSON, Circuit
Judges.

PER CURIAM

Appellant brought a 42 USC Sec. 1983 action against Appellee, the City of Decatur, for deprivation of property without due process of law. Appellee had confiscated Appellant's "For Rent" sign because its display violated a city ordinance. The district court granted summary judgment to the city because appellant had failed to comply with Georgia's ante-litem notice statute, then Ga. Code Ann. Par. 69-308. The former Fifth Circuit reversed, *Ehlers v. City of Decatur*, 614 F. 2d (5th Cir. 1980), holding that the Georgia statute was not applicable to a Sec. 1983 action brought in federal court. The action was then tried to a jury, and appellant was awarded \$990.00 in damages.

Until the final stages of the action at the trial level, appellant, a licensed attorney in the State of Georgia, appeared pro se. His motion for attorney's fees sought \$20,000 for the legal work he had performed himself and an additional \$7,500 for services per-

formed by the attorney retained by appellant in the latter stages of the litigation.

Relying on *Cofield v. City of Atlanta*, 648 F.2d 986 (5th Cir. 1981), the district declined to award attorney's fees for the work performed by appellant as a pro se litigant. *Cofield* held that 42 USC Sec. 1988 does not allow the award of attorney's fees to pro se litigants. Neither the *Cofield* court nor the lower court here, however, addressed the question whether a pro se litigant who is a practicing attorney is entitled to fees in appropriate circumstances under Sec 1988.

The district court evaluated the services rendered by appellant's retained counsel in accordance with the guidelines set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F2d 714, 719 (5th Cir. 1974) and awarded a total of \$5,127.50 for those services. The appellee paid that amount into the registry of the court, and appellant subsequently accepted payment from the clerk.

Appellant now contends that the court erred in not awarding him attorney's fees for his services also. He contends that Cofield does not resolve the issue against him, and directs our attention to Barrett v. Bureau of Customs, 651 F 2d. 1087 (5th Cir. 1981). The Barrett court held that under the Freedom of Information Act a pro se litigant who was not an attorney may not recover attorney's fees, but expressly left open the question whether an attorney who appears in his own behalf may recover fees for work he performs.

We need not reach the appellant's contentions, however intriguing they might be. Appellant's acceptance of the attorney's fees award from the clerk of the court acts as a bar to this appeal. In Cherokee Nation v. United States, 355 F. 2d 945, 174 Ct. Cl. 131 (Ct. Cl. 1966), the Court of Claims held that "a party cannot accept the benefits of a judgment, order or decree and afterwards prosecute an appeal or writ of error to review.

This general rule applies only where the acceptance has been voluntary and intentional." Id. at 949 (citations omitted; holding that under facts of that case, attorneys accepted attorney's fees award under circumstances of strong compulsion and financial duress and thus were not estopped from appealing amount of the award.

Appellant has not argued that his acceptance of the fee award was involuntary or forced upon him by circumstances of duress. Assuming therefore that his acceptance was voluntary and intentional, we hold that he is barred from appealing the amount of the award.

AFFIRMED.

APPENDIX C

Opinion of Court of Appeals
Denying Rehearing

IN THE UNITED STATES COURT
OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 82-8119

ALBERT T. EHLERS,

Plaintiff-Appellant,

versus

CITY OF DECATUR, GEORGIA

Defendant-Appellee

Appeal from the United States District
Court for the Northern District of
Georgia

ON PETITION FOR REHEARING AND SUGGESTION FOR
REHEARING EN BANK

(Opinion January 3, 11 Cir., 1983

(Feb. 25, 1983)

Before HILL, KRAVITCH AND HENDERSON,
Circuit Judges.

PER CURIAM:

(X) The Petition for Rehearing is Denied

* * * * , the suggestion for Rehearing En

is DENIED.

ENTERED FOR THE COURT:

/s/Phyllis Kravitch
United States Circuit Judge

CERTIFICATE OF SERVICE

The foregoing Petition for a Writ of certiorari has been this day May 31, 1983 served on the attorney representing Defendant litigants in this case by depositing three copies thereof in the U. S. Mails having proper postage thereon and enclosed in an envelope addressed to:

H. A. Stephens, Jr., Esquire
246 Sycamore Street
Suite 200
Decatur, Ga. 30030.